



## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board of Nursing, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 90-20
<b>Regulation title</b>	Regulations Governing the Practice of Nursing
<b>Action title</b>	Implementation of nurse licensure compact
<b>Document preparation date</b>	

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Preamble

*The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The adoption of an “emergency” regulation by the Board of Nursing is required to comply with the second enactment clause of Chapter 49 of the 2004 Acts of the Assembly, which states “That the Board of Nursing shall promulgate regulations to implement the provisions of the Nurse Licensure Compact to be effective within 280 days of the enactment of this act.” The date of enactment was March 4, 2004, the day the Governor approved HB 633.

Emergency regulations set out the regulations for implementation of the Nurse Licensure Compact including rules for issuance of a multistate licensure privilege, moving from one party state to another, notification of licensure denial to a former party state, limitations by disciplinary order on practice under a multistate privilege, a licensee's access to information in the licensure information system, and inclusion of the multistate privilege in the disciplinary provisions.

## Legal basis

*Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6), which provides the Board of Nursing the authority to promulgate regulations to administer the regulatory system:

***§ 54.1-2400 -General powers and duties of health regulatory boards***

*The general powers and duties of health regulatory boards shall be:*

...

*6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...*

The specific legal mandate to promulgate the regulation for implementation of the Nurse Licensure Compact is found in:

*§ [54.1-3005](#). Specific powers and duties of Board.*

*In addition to the general powers and duties conferred in this title, the Board shall have the following specific powers and duties:*

*14. To enter into the Nurse Licensure Compact as set forth in this chapter and to promulgate regulations for its implementation; ...*

## Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

In 2003, the General Assembly enacted Chapter 249, which created the authorization for Virginia's membership in the Nurse Licensure Compact effective January 1, 2005. Sections 54.1-3030 through 54.1-3040 provide the legal basis for the Compact and specific statutory

language for participation and administration. With so much specificity about the Compact in the Code, the only regulations that are necessary relate to procedural matters of issuing a license in a compact state, limitations of a multistate privilege after a disciplinary proceeding, and access to data on the coordinated licensure system. It is also necessary to include the multistate licensure privilege in the authority of the Board to render findings of unprofessional conduct and take disciplinary action. Without such an amendment, it would not be possible for the Board to enforce its regulations for a nurse practicing in Virginia with a multistate licensure privilege issued by another Compact state. Amended rules will ensure that all nurses who provide care to patients in Virginia, whether they hold a license or a multistate privilege, will be held to the same standards of professional conduct.

**Substance**

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10	n/a	Establishes definitions for words & terms used in the regulation	Adds a reference to words and terms already defined in § 54.1-3030 for the Nurse Licensure Compact and defines the term “primary state of residence” as the state of a person’s declared permanent or principal home for legal purposes. That term is used in the context of issuance of a multistate privilege by the board.
n/a	181	n/a	Sets out the rules for issuance of a multistate licensure privilege Subsection A provides the rule for issuance based on evidence necessary for a determination of primary state of residence, such as a driver’s license, voter registration card, or tax return. Under the Compact, the Board can only issue a multistate privilege if a nurse declares Virginia as his primary state of residence. If a nurse currently holds a Virginia license but resides in another Compact state, he will declare that state as his primary state and be issued a multistate privilege by that board. If a nurse currently holds a Virginia license but resides in a non-Compact state, he will retain his Virginia license as a single-state license. Subsection B provides the regulations governing the multistate privilege of a nurse moving from one party state to another. Practice under the former home state license and multistate privilege is allowed for up to 30 days to allow for processing of licensure in Virginia, unless the nurse is under a pending investigation by the former state. In that case, the licensure application is held and the 30-day authorization stayed until the case is resolved. A license issued by a

n/a	182	n/a	<p>former home state is no longer valid upon issuance of a license by Virginia; and if Virginia denies licensure, it must notify the former home state, where action may be initiated in accordance with laws and regulations of that state.</p> <p>Section 182 sets out the limitations on a multistate privilege Included in all disciplinary orders that limit practice or require monitoring would be the requirement that the licensee subject to the order shall agree to limit practice to Virginia during the period in which the order is in effect. A nurse may be allowed to practice in other party states while an order is in effect with prior written authorization from both the board and boards of other party state. This provision is necessary to conform Virginia’s disciplinary orders to the Compact and ensure that all party states are aware of any limitations on practice.</p>
n/a	183	n/a	<p>Section 183 sets out the rules for access to information in the coordinated licensure information system by a licensee. It provides that a licensee may submit a request in writing to the board to review the public data relating to the licensee maintained in the coordinated licensure information system. In the event a licensee asserts that any related data is inaccurate, the burden of proof would be upon the licensee to provide evidence that substantiates such claim. The board must verify and correct inaccurate data in the information system within ten business days.</p>
300	n/a	Sets out the authorization for taking disciplinary action and the definitions of unprofessional conduct	<p>Amendments ensure that: 1) persons practicing under a multistate licensure privilege are subject to the same disciplinary provisions as those holding a single state license, and 2) it is clear that a violation of regulations could be considered unprofessional conduct and subject a licensee or multistate licensure privilege holder to disciplinary action.</p>

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

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There were no alternatives to the adoption of an amended regulation; it was specifically required in the second enactment clause of Chapter 49 of the 2004 Acts of the Assembly for the Board to promulgate regulations as required for implementation of the Compact.

To develop the amended regulations necessary for licensure and issuance of a multistate licensure privilege and for the administration of the Compact, the President appointed an ad hoc committee of the Board. That committee reviewed rules established by boards of other member states and the Model Rules and Regulations for the Nurse Licensure Compact approved by the Compact Administrators in January of 2000. A number of states have adopted a separate set of regulations for the Compact, but the Board did not adopt that process.

Emergency regulations that were adopted by the Board are very similar to the Model Rules but are adapted to be applicable to Virginia for inclusion in the current regulations governing the practice of nursing. Key provisions from the Model Rules that are included in the emergency regulations include: definitions as necessary for an understanding of terminology used in Compact rules, rules for issuance of a license or a multistate privilege by a party state, limitations on a multistate licensure privilege, and access to information in the licensure information system. In addition, provisions set out the rules for a disciplinary proceeding and the causes for a finding of unprofessional conduct, as necessary to ensure that nurses practicing in Virginia under a multistate privilege are held to the same standards as a nurse who currently holds a license to practice.

### Family impact

*Please assess the impact of the emergency regulatory action on the institution of the family and family stability.*

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There is no impact of the emergency regulatory action on the institution of the family and family stability.